Supreme Court, U.S.
FILED
JAN 9 2002
CLERK

No. 00-1737

IN THE
# Supreme Court of the United States

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., and WELLSVILLE, OHIO, CONGREGATION OF JEHOVAH'S WITNESSES, INC.,
*Petitioners*,

v.

VILLAGE OF STRATTON, OHIO, and JOHN M. ABDALLA, Mayor of the Village of Stratton, Ohio, in his official capacity,
*Respondents*.

**On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit**

## BRIEF OF THE INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION, NATIONAL LEAGUE OF CITIES, INTERNATIONAL CITY-COUNTY MANAGEMENT ASSOCIATION, U.S. CONFERENCE OF MAYORS, NATIONAL CONFERENCE OF STATE LEGISLATURES, NATIONAL ASSOCIATION OF COUNTIES, AND COUNCIL OF STATE GOVERNMENTS AS *AMICI CURIAE* SUPPORTING RESPONDENTS

RICHARD RUDA *
Chief Counsel
JAMES I. CROWLEY
STATE AND LOCAL LEGAL CENTER
444 North Capitol Street, N.W.
Suite 345
Washington, D.C. 20001
(202) 434-4850

* Counsel of Record for the *Amici Curiae*

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

BEST AVAILABLE COPY

## QUESTION PRESENTED

Whether the First Amendment is violated by the Village of Stratton's ordinance requiring door-to-door canvassers to register and obtain a permit from the Village office, and to display the permit on demand to homeowners who are the subject of canvassing or to the Village's police officer.

## TABLE OF CONTENTS


| | Page |
|---|---|
| QUESTION PRESENTED | i |
| TABLE OF AUTHORITIES | iv |
| INTEREST OF THE *AMICI CURIAE* | 1 |
| STATEMENT OF THE CASE | 2 |
| SUMMARY OF ARGUMENT | 8 |
| ARGUMENT | 10 |
| THE STRATTON ORDINANCE REQUIRING DOOR-TO-DOOR CANVASSERS TO REGISTER AND OBTAIN A PERMIT AND TO DISPLAY THE PERMIT ON DEMAND DOES NOT VIOLATE THE FIRST AMENDMENT | 10 |
| A. The First Amendment Does Not Prohibit Municipalities From Requiring Canvassers And Solicitors To Register And Obtain A Permit Prior To Conducting Door-to-Door Solicitation At Private Homes | 12 |
| B. Stratton's Requirement That Canvassers Display Permits To Homeowners Or The Village's Police Officer Does Not Violate The First Amendment | 22 |
| CONCLUSION | 24 |

## TABLE OF AUTHORITIES


| CASES | Page |
|---|---|
| *ACORN v. City of Frontenac*, 714 F.2d 813 (8th Cir. 1983) | 22 |
| *American Constitutional Law Found., Inc. v. Meyer*, 120 F.3d 1092 (10th Cir. 1997), *aff'd*, 525 U.S. 182 (1999) | 9, 19-20 |
| *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60 (1983) | 11 |
| *Breard v. City of Alexandria*, 341 U.S. 622 (1951) | 21 |
| *Buckley v. American Constitutional Law Found., Inc.*, 525 U.S. 182 (1999) | *passim* |
| *Cantwell v. Connecticut*, 310 U.S. 296 (1940) | 12 |
| *Carey v. Brown*, 447 U.S. 455 (1980) | 11, 12, 13 |
| *City of Watseka v. IPAC*, 796 F.2d 1547 (7th Cir. 1986), *aff'd*, 479 U.S. 1048 (1987) | 22 |
| *City of Watseka v. IPAC*, 479 U.S. 1048 (1987) | 13 |
| *Erznoznik v. City of Jacksonville*, 422 U.S. 205 (1975) | 12 |
| *FCC v. Pacifica Found.*, 438 U.S. 726 (1978) | 13 |
| *Frisby v. Schultz*, 487 U.S. 474 (1988) | *passim* |
| *Gregory v. Chicago*, 394 U.S. 111 (1969) | 12 |
| *Heffron v. International Soc. For Krishna Consciousness, Inc.*, 452 U.S. 640 (1981) | *passim* |
| *Hynes v. Mayor and Council of Oradell*, 425 U.S. 610 (1976) | 2, 8, 13 |
| *Martin v. City of Struthers*, 319 U.S. 141 (1943) | 13 |
| *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334 (1995) | 23 |
| *New Jersey Citizen Action v. Edison Twp.*, 797 F.2d 1250 (3d Cir. 1986), *cert. denied*, 479 U.S. 1103 (1987) | 22 |
| *Nolan v. California Coast. Comm'n*, 483 U.S. 825 (1987) | 18 |




## TABLE OF AUTHORITIES—Continued


| | Page |
|---|---|
| *Perry Education Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37 (1983) | 11 |
| *Storer v. Brown*, 415 U.S. 724 (1974) | 11 |
| **CONSTITUTIONAL PROVISIONS, STATUTES, AND ORDINANCES** | |
| Colo. Const. Art. V, § 1(2) | 13 |
| § 1(3) | 13 |
| Colo. Rev. Stat. § 1-40-108(1) (1998) | 14, 20 |
| Colo. Rev. Stat. § 1-40-111(2) (1998) | 14, 19 |
| Grand Rapids Township, Michigan, Ordinance No. 315 § 1(a) | 2 |
| § 2 | 2 |
| Oshkosh, Wisconsin, Mun. Code § 8-54 | 2 |
| Plano, Texas, Code of Ordinances, Art. IV, § 11-141 | 2 |
| § 11-145-47 | 2 |
| **OTHER AUTHORITIES** | |
| Colorado Secretary of State, 2000 Election Results (available at http://www.sos.state.co.us/pubs/elections/main.htm) | 14 |

## INTEREST OF THE *AMICI CURIAE*

*Amici*, organizations whose members include state, county, and municipal governments and officials throughout the United States, have a compelling interest in legal issues that affect state and local governments.[1] The subject of this case—the ability of state and local governments reasonably to exercise their police power to protect homeowners from fraud and the invasion of privacy that may result from door-to-door canvassing of private residences—is of utmost importance to *amici* and their members.

While *amici* unequivocally support the broad protections of the First Amendment, that amendment "does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired." *Heffron v. International Soc. For Krishna Consciousness, Inc.*, 452 U.S. 640, 647 (1981). The Court has repeatedly held that "consideration of a forum's special attributes is relevant to the constitutionality of a regulation," *id.* at 650, and that "[t]he State's interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society." *Frisby v. Schultz*, 487 U.S. 474, 484 (1988) (citation omitted).

The Village of Stratton, a small municipality with a single police officer, seeks to enforce a content-neutral canvassing ordinance that does not in any way ban speech. The purpose of the Ordinance is to protect the privacy and well-being of Village residents in their homes by requiring canvassers to complete a simple registration form at the Village office, whereupon they automatically receive a solicitation permit at

---

[1] The parties have consented to the filing of this *amicus* brief and their letters of consent filed with the Clerk of the Court. This brief was not authored in whole or in part by counsel for a party, and no person or entity, other than *amici* or their members, made a monetary contribution towards its preparation or submission.

no charge. Stratton's ordinance is not unique. *See, e.g.*, Plano, Texas, Code of Ordinances, Art. IV, §§ 11-141, 11-145-47; Grand Rapids Township, Michigan, Ordinance No. 315 §§ 1(a) & 2; Oshkosh, Wisconsin, Municipal Code § 8-54. The Village of Stratton and other local governments have acted in accordance with this Court's holding that door-to-door canvassing and solicitation for political and other non-commercial purposes are not "immune from regulation under the State's police power, whether the purpose of the regulation is to protect from danger or to protect the peaceful enjoyment of the home." *Hynes v. Mayor and Council of Oradell*, 425 U.S. 610, 619 (1976).

Because of the importance of these issues to *amici* and their members, *amici* respectfully submit this brief to assist the Court in its resolution of this case.

## STATEMENT OF THE CASE

A. The Village of Stratton, Ohio, is a municipality of approximately 300 residents located on the Ohio River. Pet. App. 38a. It consists of some businesses, J.A. 376a, and residential areas consisting of approximately 70 houses, plus additional residences in trailers and trailer courts. *Id.* at 424a-425a. The Village government includes a mayor, a Village Hall that is open for business from approximately 9:00 a.m. to 4:00 or 4:30 p.m., and a single police officer whose hours are from 7:00 p.m. to 3:00 or 4:00 a.m. J.A. 382a, 437a-438a.[2]

There are several public forums in Stratton in which anyone can freely advocate political or religious views. *See* J.A. 390a-395a (testimony of Mayor John Abdalla). These

[2] In addition, Stratton has "an auxiliary police officer that pinch hits as a relief police officer." J.A. 438a (testimony of Frank J. Bruzzese, Stratton Village Solicitor).



include the village square, an area near the post office,[3] Riverside Market, the Fifth Street playground, Stratton Park, and an area near the entrance to the Sammis Plant of the Ohio Edison Company, Stratton's largest employer. *See id.* Mayor Abdalla testified that in Stratton "[y]ou can stand on any street and speak about the Bible. You can go to any one of a variety of locations in Stratton that are accessible to the public and not on somebody's private property and speak about the Bible." *Id.* at 440a.

In 1998 the Village enacted Ordinance 1998-5 to regulate the activities of solicitors and canvassers who wish to go door-to-door in the Village. The Ordinance was, among other things, "designed to protect the privacy rights of Village residents." Pet. App. 38a (opinion of district court). According to the Village Solicitor who drafted the Ordinance, it was also adopted "to protect the Village residents from 'flim flam' con artists who prey on small town populations." *Id.*

The first section of the Ordinance provides:

> The practice of going in and upon private property and/or the private residences of Village residents in the Village by canvassers, solicitors, peddlers, hawkers, itinerant merchants or transient vendors of merchandise or services, not having been invited to do so by the owners or occupants of such private property or residences, and not having first obtained a permit pursuant to Section 116.03 of this Chapter, for the purpose of advertising, promoting, selling and/or explaining any product, service, organization or cause, or for the purpose of soliciting orders of the sale of goods, wares, merchandise or services, is hereby declared to be a nuisance and is prohibited.

Pet. App. 60a (Ordinance 1998-5, § 116.01).

[3] Stratton's residents do not receive mail delivery at their homes but instead collect their mail at the Village post office. J.A. 391a-392a.

The ordinance requires persons who intend to engage in covered activities to complete a registration form at the Village Hall and to obtain a solicitation permit.[4] Pet. App. 60a-61a (§ 116.03). Each registrant who completes the form is automatically issued a permit. *Id.* at 62a (§ 116.04) ("Each Registrant who complies with Section 116.03(b) shall be furnished a Solicitation Permit."); J.A. 423a (testimony of Village Solicitor Bruzzese) (issuance of permit is "automatically triggered by a completed information form"). There is no charge for a solicitation permit. Pet. App. 40a-41a.

The ordinance also contains a provision that explains how any "owner or lawful occupant of private property" in Stratton can prohibit uninvited canvassing upon that property, *id.* at 63a-65a (§ 116.07), including the posting of a "No Solicitation" sign at the entrance to their homes. *Id.* at 64a. In addition, the Village makes available to residents a "No Solicitation Registration Form" which can be filed at the Village office, in which residents can indicate that they prohibit solicitors and canvassers from entering on their property. Pet. App. 64a-65a; J.A. 227a-229a. This form also allows residents to indicate specific exceptions to that prohibition. Pet. App. 65a; J.A. 228a-229a. Signs at Stratton's north and south corporation limits notify persons entering the Village: "Speed checked by radar. No solicitation without a permit. Violators will be prosecuted." J.A. 376a; *see also* J.A. 415a.

B. On June 3, 1999, petitioners, whose members wish to engage in door-to-door canvassing in Stratton on behalf of the Jehovah's Witnesses, brought an action for injunctive relief in which they challenged Stratton Ordinance 1998-5 as

[4] Some provisions of Stratton's ordinance and forms were modified by the district court. *See* Pet. App. 41a-42a. The registration form, as modified by the district court, is described *infra* at 5-6.



a violation of their rights under the First and Fourteenth Amendments. *See* Pet. App. 37a-38a.[5] The district court issued its ruling on petitioners' claims following an evidentiary hearing. *Id.* at 38a. The court held as an initial matter that petitioners' canvassers fall within the coverage of the Stratton ordinance because they are "'canvassers' who visit homes in neighborhoods for the purpose of 'explaining' their 'cause,' the Gospel of Jehovah." *Id.* at 39a-40a (quoting Ordinance 1998-5, § 116.01). Turning to the merits of petitioners' claims, the court reviewed the ordinance and related forms, upholding some provisions and modifying others.

The portions of the ordinance and solicitor's registration form upheld by the district court were those that require canvassers and solicitors to state: their name, home address, and residence address for the five years preceding the date of registration; a brief description of the nature and purpose of their canvassing or solicitation; the name and address of their employer or the organization with which they are affiliated, with credentials from the employer or organization; and the length of time for which they wish to solicit. Pet. App. 40a-41a & n. 2.

The district court invalidated the portion of the ordinance and registration form that required the registrant to list the address of each residence in Stratton at which solicitation was to occur. Instead, the Village agreed to provide a list of Village residents willing to receive solicitors or canvassers for attachment to the registration form. *Id.* at 41a.[6] The final

[5] Because petitioners believed that Stratton's ordinance "did not apply to the pure speech and press activities of Jehovah's Witnesses," Pet. Br. 5, they apparently never filed a registration form at the village office and never received a solicitation permit. *See id.* at 5-6.

[6] The district court noted that the failure of the Village to provide this list to registrants at no cost could render the ordinance unconstitutional. Pet. App. 42a.

item on the registration form requires registrants to provide information concerning the purpose of their canvassing activities; with respect to petitioners, the court ruled that it would be sufficient for them simply to indicate that they "seek[] to canvass as part of the Jehovah's Witness ministry." *Id.* at 42a.[7]

As noted above, once an applicant has completed the registration form the issuance of a solicitation permit is automatic, free of charge, and not subject to the exercise of discretion by Village Officials. Pet. App. 40a-41a, 62a (Ordinance § 116.04).[8] Section 116.04 prohibits permittees from "go[ing] in or upon any premises" not indicated on the registration form or on the list of Village residents willing to receive canvassers furnished by the Village to registrants. *See id.* at 41a-42a, 62a.

Section 116.04 further provides that "[e]ach person shall at all times, while exercising the privilege[9] in the Village incident to such permit, carry upon his person his permit and the same shall be exhibited by such person whenever he is requested to do so by any police officer or by any person who is solicited." *Id.* at 62a. Neither in Section 116.04 nor in any other portion of the ordinance (either before or after its

[7] The court indicated that "lesser known organizations, particularly those marketing commercial products or soliciting only for contributions, may need to provide additional information." Pet. App. 42a.

[8] Mayor Abdalla testified that he signs blank solicitation permits in advance and leaves the pre-signed permits with the Village clerk, who distributes them once the permit application has been completed. *See* J.A. 386a-387a. The Mayor testified that no registrant has ever been denied a permit, nor has any permit, once issued, been revoked. *Id.*

[9] Although it did not strike the use of the word "privilege" in the Ordinance, the district court noted that "the exercise of a constitutional right is not a 'privilege' and to that extent the Ordinance mischaracterizes the issue." Pet. App. 43a n.4. The court ruled, however, that "[s]uch mischaracterization does not . . . by itself render the Ordinance unconstitutional." *Id.*



modification by the district court) is there any requirement that the permit contain the applicant's name.[10]

The district court also modified the time limits for solicitation contained in the Ordinance. Section 116.05, as drafted, stated that no solicitation would be permitted before 9:00 a.m. or after 5:00 p.m. Pet. App. 43a. Although this would have allowed door-to-door canvassing during that eight-hour period on weekends as well as on weekdays, the district court ruled that this time limitation "unnecessarily chills the plaintiffs' First Amendment right to speech." *Id.* It accordingly ruled that the 5:00 p.m. termination time was "unconstitutional on its face," *id.* at 44a, and ordered that the Ordinance be modified "to allow covered activities, including welcome door-to-door solicitation, to occur during reasonable hours of the day." *Id.* The court stated that "[t]his may be easily accomplished by listing reasonable times on a month to month basis." *Id.* at 44a-45a.

Finally, the district court modified page three of the No Solicitation Registration Form available to Village residents. *See, e.g.*, J.A. 167a-169a. The third page contains a list of specific organizations or causes that residents can check to indicate their willingness to receive canvassers from the designated organization. *See id.* at 169a. The sixth item on this list was "Jehovah Witnesses." *Id.* The district court ordered this item stricken from the list. Pet. App. 45a.

Petitioners appealed the judgment of the district court upholding certain portions of the ordinance and forms, as

[10] The text of the blank "Permit to Canvass to Solicit, etc." in the Joint Appendix contains a reference to "the above Applicant" as having received a permit to canvass in the Village. J.A. 248a. The inclusion of the applicant's name is not, however, required by the Ordinance and the blank permit included in the Joint Appendix does not contain a space for the applicant's name. *See id.* The permit does state that "[t]he address or addresses of parties inviting the Applicant appear above in Applicant's Application." *Id.*

modified. *Id.* at 2a. The Village did not appeal any of the district court's modifications of the ordinance or forms. *See id.* The court of appeals affirmed the judgment of the district court. *Id.*

## SUMMARY OF ARGUMENT

A. This Court has repeatedly held that the First Amendment "does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired." *Heffron v. International Soc. For Krishna Consciousness, Inc.*, 452 U.S. 640, 647 (1981). The "nature of the forum" is an integral part of the Court's analysis in cases involving speech regulation. *See, e.g., Frisby v. Schultz*, 487 U.S. 474, 479 (1988).

The Court has accordingly distinguished regulation of speech in public forums from that in non-public forums, such as private residences. Of all non-public forums, the one entitled to greatest protection is the private home. Consequently, the Court has squarely held that "door-to-door canvassing and solicitation" are not "immune from regulation under the State's police power, whether the purpose of the regulation is to protect from danger or to protect the peaceful enjoyment of the home." *Hynes v. Mayor and Council of Oradell*, 425 U.S. 610, 619 (1976).

Stratton's requirement that all persons wishing to engage in door-to-door canvassing at private homes in the Village must first register and obtain a permit is constitutional under this Court's precedents, such as *Heffron*. In that case the Court upheld a content-neutral law that made it a misdemeanor to distribute or sell printed or written religious materials at the Minnesota state fair anywhere on the fairgrounds except at a licensed booth or other assigned location. The Court reasoned that the State had a substantial interest in the orderly movement and control of persons at the fair and that the State was not required to use less restrictive means to accomplish



this goal. In addition, there were alternative forums outside the fairgrounds where the Krishnas could disseminate their views. "More importantly," the Court said, "the Rule has not been shown to deny access within the forum in question." 452 U.S. at 654.

Like the regulation at issue in *Heffron,* Stratton's registration scheme is content-neutral, does not ban any speech, leaves open numerous alternatives for the communication of religious and political ideas, and advances a very substantial government interest—protecting the privacy and safety of residents in their homes.

The basic information that Stratton asks canvassers to provide at the time of registration is also comparable to the disclosures that were the subject of First Amendment scrutiny in *Buckley v. American Constitutional Law Found., Inc.*, 525 U.S. 182 (1999), and were upheld either by this Court, *see id.* at 192 n. 11, 196; *id.* at 233 (Rehnquist, C.J., dissenting), or by the Tenth Circuit. *See id.* at 202 (citing 120 F.3d at 1104-05).

The only provision of the Stratton disclosure rules that does not have a counterpart in the regulations that survived judicial scrutiny in *Buckley* reflects the fact that Stratton's ordinance regulates canvassing at private homes, while *Buckley* involved signature solicitation in public forums. This is Stratton's requirement that registrants provide the address of each Stratton residence at which they plan to canvass. This requirement, however, was modified by the district court to require the Village to provide each registrant, at no charge, a list of Village residents willing to receive canvassers. *See* Pet. App. 41a.

B. The Village's regulatory scheme is constitutional insofar as it requires a canvasser to carry a permit and to exhibit the permit whenever requested to do so by a homeowner who is the subject of canvassing or by the

Village's police officer. The unique potential for harm posed by canvassing of private homes in a small town with elderly residents and a single police officer on duty only in the evening and early morning hours renders Stratton's permit scheme valid under the First Amendment.

The ordinance does not require that the permit contain the canvasser's name and the permit issued by the Village apparently does not even contain a space for the canvasser's name. *See* J.A. 248a. If the Village were to deem it necessary to include identifying information on the permit, this could easily be done without disclosing the canvasser's name. For example, the Village could assign each registrant a unique number consisting of the last two digits of the year in which the permit is issued, together with a number indicating the sequence of the permit for that year (*e.g.*, No. 98-2). This information would be easy for a homeowner to remember or record, and sufficient to enable Village authorities to enforce the ordinance against canvassers who violate the terms of Stratton's ordinance or other state or local laws.

## ARGUMENT

### THE STRATTON ORDINANCE REQUIRING DOOR-TO-DOOR CANVASSERS TO REGISTER AND OBTAIN A PERMIT AND TO DISPLAY THE PERMIT ON DEMAND DOES NOT VIOLATE THE FIRST AMENDMENT

This Court has repeatedly emphasized that it is "common ground. . . that the First Amendment does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired." *Heffron v. International Soc. For Krishna Consciousness, Inc.*, 452 U.S. 640, 647 (1981) (collecting cases); *Frisby v. Schultz*, 487 U.S. 474, 479 (1988). "[C]onsideration of a forum's special attributes is relevant to the constitutionality of a regulation since the



significance of the governmental interest must be assessed in light of the characteristic nature and function of the particular forum involved." *Heffron*, 452 U.S. at 650-51.

As the Court explained in *Frisby*,

> To ascertain what limits, if any, may be placed on protected speech, we have often focused on the 'place' of that speech, considering the nature of the forum the speaker seeks to employ. Our cases have recognized that the standards by which limitations on speech must be evaluated 'differ depending on the character of the property at issue.'

487 U.S. at 479 (quoting *Perry Education Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 44 (1983)). *Frisby* emphasized that "'[t]he State's interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society.'" 487 U.S. at 484 (quoting *Carey v. Brown*, 447 U.S. 455, 471 (1980)). *See also Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60, 84 (1983) (Stevens, J., concurring in the judgment) ("regulations of form and context [of speech] may strike a constitutionally appropriate balance between the advocate's right to convey a message and the recipient's interest in the quality of his environment").

In a recent case involving the regulation of political speech, the Court reiterated that there is no "'litmus-paper test' [to] separate valid ballot-access provisions from invalid interactive speech restrictions," nor any "'substitute for the hard judgments that must be made.'" *Buckley v. American Constitutional Law Found., Inc.*, 525 U.S. 182, 192 (1999) (quoting *Storer v. Brown*, 415 U.S. 724, 730 (1974)). This case, involving the regulation of protected speech in the quintessential nonpublic forum, the private home, provides no exception to the painstaking approach outlined in the Court's earlier cases. While hard judgments are invariably called for in First Amendment cases involving the regulation of

protected speech, an analysis of the Village of Stratton's registration and permit scheme demonstrates the validity of that scheme under the First Amendment.

### A. The First Amendment Does Not Prohibit Municipalities From Requiring Canvassers And Solicitors To Register And Obtain A Permit Prior To Conducting Door-to-Door Solicitation At Private Homes

This Court has repeatedly drawn a bright-line distinction between the regulation of speech in public forums and speech on private property. As the Court observed in *Cantwell v. Connecticut,* 310 U.S. 296 (1940),

> Even the exercise of religion may be at some slight inconvenience in order that the state may protect its citizens from injury. Without a doubt a state may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent.

*Id.* at 306. "A State or municipality may protect individual privacy by enacting reasonable time, place, and manner regulations applicable to all speech irrespective of content." *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 209 (1975). *See also Carey*, 447 U.S. at 470-71 ("'no mandate in our Constitution leaves States and governmental units powerless to pass laws to protect the public from the kind of boisterous and threatening conduct that disturbs the tranquility of . . . homes'") (quoting *Gregory v. Chicago*, 394 U.S. 111, 118 (1969) (Black, J., concurring)).

These governmental concerns are heightened when canvassers seek to go door-to-door to engage in intensive one-on-one political or religious speech at private homes. This Court has squarely held that "door-to-door canvassing and solicitation" are not "immune from regulation under the State's police power, whether the purpose of the regulation is to protect from danger or to protect the peaceful enjoyment of the home." *Hynes v. Mayor and Council of Oradell*, 425 U.S. 610, 619 (1976). *See also Martin v. City of Struthers,* 319 U.S. 141, 144 (1943) (ordinances "may be aimed at the protection of the householders from annoyance, including intrusions upon the hours of rest, and at the prevention of crime"); *FCC v. Pacifica Found.*, 438 U.S. 726, 748 (1978) ("in the privacy of the home . . . the individual's right to be left alone outweighs the First Amendment rights of an intruder"); *City of Watseka v. IPAC,* 479 U.S. 1048, 1048 (1987) (White, J., dissenting) (purpose of ordinance regulating door-to-door canvassing "is to protect citizens' privacy and to prevent crime, obviously legitimate governmental objectives"); *Carey*, 447 U.S. at 478-79 (Rehnquist, J., dissenting) ("Whether . . . alone or accompanied by others. . . there are few of us that would feel comfortable knowing that a stranger lurks outside our home.").



It is thus beyond dispute that municipalities can regulate door-to-door canvassing for political or religious (to say nothing of commercial) purposes. The question presented in this case is the validity of Stratton's specific registration and permit requirements. *Amici* submit that both of these requirements are valid under the First Amendment.

As cases such as *Cantwell* and *Hynes* indicate, municipalities can and must have the police power to take carefully designed steps to regulate door-to-door canvassers. Even *Buckley,* which involved state regulation of political speech in *public* forums,[11] deemed a "legitimate control[]" the require-

---

[11] Although not expressly stated in the Court's opinion, it is clear that the canvassing involved in *Buckley* was the mass solicitation of signatures for initiative petitions that could only be carried out in public forums. *See* Colo. Const. Art. V, § 1 (2) & (3) (number of signatures required to place an initiative or referendum on ballot must equal "at least five percent of

ment that each circulator submit a dated affidavit containing his or her name and notarized signature. 525 U.S. at 192 n.11, 196. *Buckley* also upheld the requirement that each solicitor disclose "the 'address at which he or she resides, including the street name and number, the city or town, [and] the county.'" *Id.* at 196 (quoting Colo. Rev. Stat. § 1-40-111(2) (1998)); *see also id.* at 233 (Rehnquist, C.J., dissenting).

Each case thus presents the question whether the regulatory measures adopted by the municipality are content-neutral, do not "undu[ly] hind[er] . . . political conversations and the exchange of ideas," *Buckley,* 525 U.S. at 192, and request only information that is "warranted by the state interests . . . alleged to justify those restrictions." *Id.* When analyzed under these standards, it is clear that the information sought by

---

the total number of votes cast for all candidates for the office of secretary of state at the previous general election"); Colo. Rev. Stat. §1-40-108(1) (requisite number of signatures must be collected within six months). In the 2000 general election, 1,611,417 votes were cast for the various candidates for secretary of state. *See* Home Page of Colorado Secretary of State, 2000 Election Results (Nov. 7, 2000 General Election), available at http://www.sos.state.co.us/pubs/elections/main.htm. At present, at least 80,570 signatures must be collected within six months in order to place an initiative or referendum on the ballot in Colorado. This necessarily entails vastly different—and less intrusive—methods of political interaction in public forums than the intensive one-on-one canvassing at private homes regulated by Stratton's ordinance.

There are also indications in the opinions of both the majority and the dissent in *Buckley* that the Court was aware that the process of gathering signatures for initiatives and referenda has become a highly commercialized process in which gathering as many signatures as possible while engaging in as little political discourse as possible is the *sine qua non* of success. *See Buckley,* 525 U.S. at 202 ("Today the initiative and referendum process is dominated by money and professional firms.") (citation omitted); *id.* at 227 (Rehnquist, C.J., dissenting) ("in recent years, the initiative and referendum process has come to be more and more influenced by out-of-state interests which employ professional firms doing a nationwide business") (citations omitted).



Stratton's registration form and the manner in which permits are issued—automatically upon completion of the form—are constitutional.

First, the Stratton ordinance is content-neutral, applying by its terms to all persons wishing to canvass or solicit in the Village. *See* Pet. App. 60a-61a (Ordinance 1998-5, § 116.03); *see also* J.A. 230a-247a (solicitor's registration forms). Moreover, Stratton's regulatory scheme is tailored to require only essential information needed to protect homeowners from uninvited or dishonest canvassers and solicitors. In addition, the Village provides ample "alternative forums for the expression of [petitioners'] protected speech." *Heffron*, 452 U.S. at 654. *See* discussion *supra* at 2-3 (describing locations throughout the Village where political or religious speech may be engaged in without a permit). Finally, the Village's registration scheme is warranted by a compelling interest—that of protecting the safety and privacy interests of Stratton residents in their homes.

The validity of Stratton's registration requirement for canvassing at private homes is clear when it is compared to the regulation upheld in *Heffron,* which regulated religious speech and the distribution of religious literature in a "limited public forum." 452 U.S. at 655. Respondents in *Heffron*, members of the International Society for Krishna Consciousness, brought a First Amendment challenge to Rule 6.05 of the Minnesota Agricultural Society, a public corporation that operated the State Fair. Rule 6.05 made it a misdemeanor to distribute or sell printed or written material anywhere on the fairgrounds except from a licensed booth or other fixed and assigned location. Such locations were allocated by Fair officials on a nondiscriminatory, first-come, first-served basis.

The Krishnas challenged the applicable rule, arguing that it suppressed one of the core elements of their religion, the practice of Sankirtan, a religious ritual that requires members

to go into public places to distribute or sell religious literature and to solicit donations for the support of the Krishna religion. Reversing the Minnesota Supreme Court, this Court ruled that the state regulation that required Krishnas to confine their ritually required distribution, sales and solicitation activities to a fixed booth within the fairgrounds did not violate the First Amendment.

The Court first noted that the State had a substantial interest in "the orderly movement and control" of the "large crowds" that frequent the state fair, and that this state interest is a "substantial" one. 452 U.S. at 650. In particular, the Court noted that "without Rule 6.05 there would be widespread disorder at the fairgrounds." *Id.* at 653.

Next, the Court rejected the Krishnas' argument that the First Amendment required the State to employ "less restrictive means" to accomplish its objectives, "such as penalizing disorder or disruption, limiting the number of solicitors, or putting more narrowly drawn restrictions on the location and movement" of the Krishnas. *Id.* at 654. The Court ruled that the state officials, in crafting regulations applicable to solicitation at the State Fair, had to consider not only the needs of the Krishnas, but also "all other organizations that would be entitled to distribute, sell, or solicit if the booth rule" were replaced by some other regulatory regime. *Id.*

Finally, the Court determined that there were "alternative forums for the expression of [the Krishnas'] protected speech despite the effects of the Rule." *Id.* The Court first noted that "the Rule does not prevent [the Krishnas] from practicing Sankirtan anywhere outside the fairgrounds." *Id.* at 654-55. "More importantly," the Court added, "the Rule has not been shown to deny access within the forum in question." *Id.* at 655. The Court reasoned that the rule did not exclude the Krishnas from the fairgrounds but simply limited the Krishnas' canvassing and literature distribution to a fixed



location at the fairgrounds, on precisely the same terms as applied to every other organization participating in the State Fair. *Id.* at 654-55. In the Court's view, Rule 6.05 "provide[d] [the Krishnas] and other organizations with an adequate means to sell and solicit on the fairgrounds." *Id.* at 655.

Applied to this case, *Heffron*'s analysis supports the decision of the court below upholding Stratton's registration requirements as modified by the district court. First, the interest of the Village in preventing fraudulent solicitation or canvassing on private property and the protection of Village residents from uninvited canvassers or solicitors is plainly substantial, if not compelling. Second, the Village's application scheme is permissive to begin with, as it does not exclude any law-abiding organization or individual from obtaining a permit and allows them to canvass at any home in the Village in which the resident has not indicated an unwillingness to receive canvassers. It is thus difficult to envision how the Village could accomplish its valid objectives by less restrictive means, especially given its limited law enforcement resources and the extensive hours during which canvassing is permitted under the district court's order. As it is, canvassing is permitted from 9:00 a.m. until well in the evening, *see* Pet. App. 43a-45a, and the Village's single police officer is on duty only from 7:00 p.m. until 3:00 a.m. *See* J.A. 382a, 437a-438a.

Finally, the regulatory scheme applies only to canvassing at private homes. There is ample testimony in the record about the numerous public forums throughout the Village where religious or political discussion can be carried on by any person or organization without an application or permit of any kind. *See* J.A. 390a-395a; 440a. In short, under the analytical framework laid down by this Court in *Heffron*, which also involved the efforts of a religious group to disseminate information about its religion, the Stratton application scheme is valid under the First Amendment.

The information requested by Stratton's registration form as modified by the district court also falls within the parameters of permissible regulation established by this Court two years ago in *Buckley*, in which state laws that required the disclosure of similar information satisfied judicial scrutiny. *Buckley* is particularly instructive because it upheld the disclosure of solicitors' names, addresses, and other information in the context of political speech in public forums, in contrast to the non-public forums regulated by the Stratton ordinance, which implicate residential safety and privacy interests not present in *Buckley*.[12]

Analyzed in light of the standards articulated in *Buckley* and the particular concerns raised by door-to-door canvassing, *see, e.g., Hynes*, 425 U.S. at 616-20, the disclosure requirements contained in Stratton's registration form satisfy the First Amendment. First, they do not "significantly inhibit communication . . out proposed political change." *Buckley*, 525 U.S. at Second, the information required

[12] Since one purpose of the Stratton ordinance is to prevent canvassing at the private homes of Stratton residents who do not wish to be canvassed, one key feature of the Village's ordinance that would not be present in a public forum case is that the Stratton scheme leaves to the homeowner the decision about whether and by whom canvassing will be permitted. *See* Stratton Ordinance 1998-5, § 116.07 (Pet. App. 63a-65a). This is consistent with this Court's precedents on limitations on uninvited speech at private homes and on property rights generally. *See Frisby*, 487 U.S. at 484-85 ("a special benefit of the privacy all citizens enjoy within their own walls, which the State may legislate to protect, is an ability to avoid intrusions"); *Nolan v. California Coastal Comm'n*, 483 U.S. 825, 831 (1987) ("We have repeatedly held that, as to property reserved by its owner for private use, the right to exclude [others is] one of the most essential sticks in the bundle of rights that are commonly characterized as property.") (internal quotations and citations omitted).

[13] As noted above, *see* discussion *supra* at 2-3, in addition to the homes of Stratton residents who wish to receive canvassers and solicitors, there are several public forums in Stratton where discourse on religious or



by the Solicitation Permit Application form, as modified by the district court, is "warranted by the state interests . . . alleged to justify" the information requested. *See id.*

The validity of Stratton's registration scheme is clear from a comparison of the disclosures required by the Stratton ordinance, as modified by the district court, with those that survived review by this Court or the Tenth Circuit in *Buckley*. That numerous disclosures survived judicial scrutiny in *Buckley* is especially significant in analyzing Stratton's permit application, since *Buckley* involved the regulation of mass signature solicitations in public forums, whereas the Stratton ordinance regulates one-on-one canvassing at private homes. *See* Br. *Am. Cur.* Brennan Center in Support of Neither Party 11 (*Buckley* "confirms that disclosure laws are constitutional, provided that individuals who . . engage in . . . one-on-one political advocacy . . . are not required to reveal their names while disseminating their message").

In *Buckley* this Court upheld a state law requirement that signature solicitors file with the Secretary of State an affidavit that contains the solicitor's name and, "among several particulars, the 'address at which he or she resides, including the street name and number, the city or town, [and] the county.'" 525 U.S. at 196 (quoting Colo. Rev. Stat. § 1-40-111(2) (1998)). The Stratton ordinance similarly requires canvassers to file at the Mayor's office their name and home address, plus their address of residence for the preceding five years. *See* Pet. App. 61a (Ordinance 1998-5, § 116.03 (b)(1)).

The *Buckley* Court further noted that the Tenth Circuit had "upheld the State's requirements for disclosure of *payors*, in particular, proponents' names and the total amount they have spent to collect signatures for their petitions." 525 U.S. at

political subjects can be freely undertaken by petitioners or advocates of any other causes.

202 (citing 120 F.3d at 1104-1105).[14] Stratton requires canvassers to disclose the name and address of their employer or affiliated organization, and documentation authenticating the canvasser's relationship with the employer or organization, as well as to provide "[s]uch other information. . . as may be reasonably necessary." Ordinance 1998-5, §§ 116.03(b)(3) & (6), Pet. App. 61a.[15]

The Colorado scheme at issue in *Buckley* required signature solicitation to be conducted "within six months from the date that the titles [and] submission clause . . . have been fixed." Colo. Rev. Stat. § 1-40-108(1) (quoted in *Buckley*, 525 U.S. at 188 n.4). The Stratton ordinance simply requires a permit applicant to state "[t]he length of time" during which canvassing or solicitation is expected to occur, with no time limit fixed by law. Pet. App. 61a (Ordinance 1998-5, § 116.03 (b)(4)).

One provision of the Stratton permit application has no counterpart in the Colorado petition scheme, reflecting the fact that Stratton's ordinance regulates intensive door-to-door solicitation at private homes whereas the Colorado laws regulate solicitation in public forums. This is the requirement, set forth in subsection 116.03(b)(5), that the applicant provide "[t]he specific address of each private residence at which the Registrant intends to" canvass or solicit. Pet. App. 61a. This provision, as noted above, *see* discussion *supra* at 18 n.12, is

---

[14] The Court denied a cross-petition filed by the *Buckley* respondents, *see* 522 U.S. 1113 (1998), and did not rule on the provisions of the Colorado scheme upheld by the Tenth Circuit. *See* 525 U.S. at 201.

[15] As noted above, the district court ruled that in the case of petitioners, all that was required to comply with this provision of the ordinance was for petitioners to state that they "seek[] to canvass as part of the Jehovah's Witness ministry." Pet. App. 42a. Thus, as far as petitioners are concerned, the information required by subsection 116.03(b)(6) is even less than that required by subsection 116.03(b)(3), which requests the name and address of the registrant's employer or affiliated organization.



congruent both with this Court's property rights cases and those cases that emphasize the right of homeowners to exclude door-to-door canvassers without violating the canvassers' First Amendment rights. *See, e.g., Breard v. City of Alexandria*, 341 U.S. 622, 642-45 (1951); *id.* at 650 (Black, J., dissenting) ("Of course homeowners can if they wish forbid newsboys, reporters, or magazine solicitors to ring their doorbells."). In addition, under the ordinance as modified by the district court, the Village facilitates this process by providing to registrants upon request, and at no charge, a list of Stratton residents willing to receive canvassers. *See* Pet. App. 41a-42a.

Finally, the Stratton ordinance provides that once the registrant has completed the registration form, the issuance of a permit is automatic. *See* Ordinance 1998-5, § 116.04, Pet. App. 62a (each applicant who completes the application form "shall be furnished a Solicitation Permit"). The Village thus has *no* discretion to deny a permit to canvassers who have not previously violated any relevant state or local law and who provide the ministerial information requested by the form. No registrant has ever been denied a permit, nor has a permit ever been revoked. *See* J.A. 386a-87a. The ordinance is both content-neutral and ministerial insofar as the application for and issuance of solicitation permits is concerned. *See Heffron*, 452 U.S. at 649 (noting invalidity of speech regulations "open to . . . arbitrary application" and thus having "the potential for becoming a means of suppressing a particular point of view").

In short, under the standards applied in *Buckley* and other cases, Stratton's permit application and issuance procedures are valid. They do not "significantly inhibit communication" protected by the First Amendment, and are fully "warranted by the state interests . . . alleged to justify [the] restrictions," *Buckley*, 525 U.S. at 192, namely, the protection of residents from uninvited or fraudulent canvassing at their homes.

### B. Stratton's Requirement That Canvassers Display Permits To Homeowners Or The Village's Police Officer Does Not Violate The First Amendment

The Village's regulatory scheme is constitutional insofar as it requires a canvasser to carry a permit and to exhibit the permit "whenever . . . requested to do so by any police officer or by any person who is solicited." Pet. App. 62a (Ordinance 1998-5, § 116.04). The unique potential for harm posed by canvassing of private homes in a small town with elderly residents and a single police officer on duty only in the evening and early morning hours, J.A. 382a, while solicitation can occur throughout the day, makes Stratton's scheme a permissible one under the Constitution. *See, e.g., Heffron,* 452 U.S. at 650-51 ("consideration of a forum's special attributes is relevant to the constitutionality of a regulation since the significance of the governmental interest must be assessed in light of the characteristic nature and function of the particular forum involved"). *Amici* accordingly urge the Court to hold that the Stratton application and permit scheme is valid in its entirety, as currently applied by the Village.[16]

---

[16] In a number of lower court cases, canvassing registration and permit requirements have been deemed permissible by the court or conceded to be valid by plaintiffs. *See, e.g., New Jersey Citizen Action v. Edison Twp.,* 797 F.2d 1250, 1269 (3d Cir. 1986) (Weis, J., dissenting) ("plaintiffs here concede that identification may be required"), *cert. denied,* 479 U.S. 1103 (1987); *City of Watseka v. IPAC,* 796 F.2d 1547, 1557 (7th Cir. 1986) ("IPAC is more than willing to comply with Watseka's registration requirements and to honor all 'No Solicitors' signs" and objects only to "the 5 p.m. to 9 p.m. complete ban on solicitation"); *see id.* at 1554 (ordinance "required all solicitors to register with the city clerk, who would issue Certificates of Registration"), *aff'd,* 479 U.S. 1048 (1987); *ACORN v. City of Frontenac,* 714 F.2d 813, 818 & n.7 (8th Cir. 1983) (Frontenac's interests in protecting its residents can be served "by enforcement of the city's application and identification requirements for all canvassers, peddlers, and solicitors," which include an "identification card" which "shall, upon demand, be exhibited to any police officer or other City official, and shall be displayed to any person who is being solicited").



The Stratton permit does not require the canvasser's name, Resp. Br. 32 n.1, and as issued by the Village apparently does not even contain a space for it. J.A. 248a.[17] Nor does the language of the Ordinance require that a canvasser's name appear on the permit issued by the Village clerk. *Compare* Pet. App. 61a (Ordinance 1998-5, § 116.03(b)(1)) (requiring applicant to provide "name and home address"), *with* Pet. App. 62a (*id.* §116.04) (setting out "content" of permit but making no express reference to the inclusion of the applicant's name).

Even if a municipality were to deem it necessary to include identifying information on a canvassing permit, this could easily be done without disclosing the canvasser's name. *Cf. McIntyre v. Ohio Elections Comm'n,* 514 U.S. 334, 353 (1995) (invalidating state law prohibiting anonymous handbilling but recognizing that "a State's enforcement interest might justify a more limited identification requirement"). To give just one example, the permit could contain a unique number consisting of the last two digits of the year in which the permit was issued together with a number indicating the sequence of the permit for that year (*e.g.,* No. 98-2). A conspicuous identifying number of this kind would be clear, simple, and easy for a homeowner to remember or record. It would thereby provide adequate information to enable

---

[17] Although the text of the blank permit contained in the Joint Appendix refers to "the above Applicant," there is no designated space in the permit form for the inclusion of the canvasser's name. J.A. 248a. "The permit form does not have the name of the individual on it and is pre-signed by Mayor Abdalla." Resp. Br. 32 n.1; *but cf.* Pet. Br. 8.

municipal authorities to enforce the law against canvassers who violate the terms of canvassing or solicitation ordinances or other state or local laws.[18]

## CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

RICHARD RUDA *
Chief Counsel
JAMES I. CROWLEY
STATE AND LOCAL LEGAL CENTER
444 North Capitol Street, N.W.
Suite 345
Washington, D.C. 20001
(202) 434-4850

January 9, 2002

* Counsel of Record for the
*Amici Curiae*

---

[18] In its *amicus* brief in support of neither party, the Brennan Center states that *Buckley v. ACLF* "suggests that Stratton, Ohio, could constitutionally require canvassers obtain a permit but not that they display it upon demand." Br. at 11 n. 3. *Amici* submit that the compelling purposes of the permit requirement would be far better served by using an identifying number for the canvasser and requiring canvassers to show their permit to homeowners or law enforcement officers upon request, than by a rule requiring canvassers to obtain a permit but prohibiting homeowners or police officers from seeing it.